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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIE LEE MITCHELL,

Defendant and Appellant.

B277743

(Los Angeles County
Super. Ct. No. YA087647)

APPEAL from an order after judgment by the Superior Court of Los Angeles County, Alan B. Honeycutt, Judge. Affirmed.

Brad Kaiserman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Willie Lee Mitchell appeals from a modified sentence imposed after an order granting his petition for resentencing under Penal Code section 1170.18 (Proposition 47).¹ We find no error and affirm.

FACTUAL AND PROCEDURAL SUMMARY

In an earlier chapter of this case, appellant was convicted by jury of second degree robbery (§ 211) and forgery (§ 470, subd. (d)). The court found appellant suffered one prior strike conviction (§§ 667, subds. (b) - (i) & 1170.12, subds. (a) - (d)), one prior serious or violent felony conviction (§ 667, subd. (a)(1)), and three prior felony convictions for which a prison term was served (§ 667.5, subd. (b)). On February 6, 2014, the court sentenced appellant to a total term of 19 years four months in prison, calculated as a term of 10 years for robbery in count 1 (the upper term of five years, doubled because of the strike finding); a consecutive term of 16 months for forgery in count 2 (the midterm of eight months, doubled because of the strike finding); plus consecutive terms of five years for the prior serious felony, and three years for the prison priors.

Appellant appealed the judgment, which we affirmed on December 3, 2015, in case No. B254321. As we discussed in our opinion, appellant's convictions involved two separate crimes: the robbery of Robbin Bridges on June 10, 2013, in which appellant took a purse containing Bridges' checkbook and other personal items, and the forgery of one of Bridges' checks on June 12, 2013, in which appellant attempted to negotiate a check payable to himself at a store.

¹ All section references are to the Penal Code.

As part of his appeal in case No. B254321, appellant argued he should be resentenced under the provisions of Proposition 47, which had been enacted after judgment was entered. We stated that appellant's forgery conviction in count 2 appeared to be eligible for relief under Proposition 47, but the matter first had to be presented to the trial court before it could be considered on appeal. Our decision became final, and the remittitur was issued on March 28, 2016.

On April 22, 2016, appellant filed an application for resentencing pursuant to Proposition 47 in the trial court, requesting his forgery conviction in count 2 to be reduced to a misdemeanor. The application was heard on July 28, 2016, and appellant represented himself at the hearing. After hearing argument, the court granted the petition and reduced appellant's forgery conviction to a misdemeanor.

The court then turned to resentencing and heard argument, particularly as to whether appellant's forgery conviction should be sentenced consecutively or concurrently. The court concluded the sentence should be consecutive, and it resentenced appellant to a total term of 19 years: the same term of 10 years for robbery in count 1, and the same enhancements of five years for the prior serious felony conviction, and three years for the prison priors. The court imposed a new sentence for forgery in count 2, consisting of 12 months in the county jail -- the appropriate sentence for misdemeanor forgery, pursuant to section 473, subdivisions (a) and (b).

The court explained why it had chosen a consecutive sentence for appellant's misdemeanor forgery conviction in count 2: "These are two separate incidents. There's a robbery that he was convicted of on the date of June 10, 2013. Two days later he

was then found at a check cashing location with the victim's check attempting to cash that check on June 12th. [¶] The court made appropriate findings at the time of sentencing that I will document at this time that these are separate and apart distinct crimes and the court feels a consecutive sentence is appropriate."

On August 9, 2016, appellant filed a timely notice of appeal from the court's July 28, 2016 order and resentencing.

CONTENTIONS

After examining the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. (See *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) By notice sent on March 6, 2017, the clerk advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider.

In a letter filed April 4, 2017, appellant contends the trial court erred by failing to consider all components of his sentence when it resentenced him on July 28, 2016, after granting Proposition 47 relief. Appellant cites *People v. Mendoza* (2016) 5 Cal.App.5th 535 (*Mendoza*) in support of his argument. Appellant's contentions have no merit.

In *Mendoza*, the defendant was convicted in two separate cases, which the appellate court called "Case A" and "Case B." In Case A the defendant was sentenced on the principal count to 32 months in state prison with a consecutive five-year prior serious felony enhancement. Case A also included two subordinate counts, which were sentenced concurrently. In Case B the defendant was sentenced to a consecutive term of 16 months in prison.

The court later granted the defendant's Proposition 47 petition and reduced the offense in Case B to a misdemeanor. The court modified that sentence to a one-year term in county jail, which was deemed served. The court also resentenced the defendant in Case A, modifying one of the 32-month concurrent sentences to become a consecutive sentence of 16 months in prison. (*Mendoza, supra*, 5 Cal.App.5th at p. 537.)

The defendant appealed, challenging the trial court's authority to resentence him in Case A, which was not the subject of his Proposition 47 petition. The *Mendoza* court upheld the trial court's approach, stating "we hold that when a trial court grants Proposition 47 relief for a subordinate term, the court may resentence the defendant on any component of the aggregate term." (*Mendoza, supra*, 5 Cal.App.5th at p. 537.) The court explained: "When a trial court grants Proposition 47 relief on an eligible felony offense, it resentences the defendant to a misdemeanor. [Citation.] Proposition 47 does not limit the court to rigid sentencing options. [Citations.] A trial court may reconsider any component underlying the sentence." (*Id.* at p. 538.)

Appellant contends the trial court failed to consider his aggregate sentence at the hearing on July 28, 2016, but that is wrong. The court made it clear that it was resentencing appellant for the entire case, telling him "I have to re-sentence you." The court addressed all sentencing components of count 1, the sentence in count 2, and whether the sentence in count 2 should be consecutive or concurrent to the sentence in count 1. The court double-checked aspects of the sentence, and it awarded custody credits and ordered appellant to provide samples and pay

fees and fines as required by law. The court fully addressed all aspects of appellant's sentence.

What seems to be underlying appellant's argument is his unhappiness with the result. The court reduced his overall sentence from 19 years and four months to 19 years, but appellant contends it should have been reduced even more. The trial court presided over appellant's trial and stated several times during the July 28, 2016 hearing that it remembered the case and appellant. The court also demonstrated a clear recollection of the facts of appellant's case when it explained the reasons for imposing a consecutive sentence. Together with the court's discussion of all components of appellant's aggregate sentence, this indicates that the court fully considered all relevant circumstances in arriving at an overall sentence of 19 years. Under these circumstances, the court exercised appropriate sentencing discretion. (See *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978 ["The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review."].)

REVIEW ON APPEAL

We have examined the entire record and are satisfied appellate counsel has complied fully with counsel's responsibilities. (*Wende, supra*, 25 Cal.3d at p. 443; *Smith v. Robbins* (2000) 528 U.S. 259, 278-284.)

DISPOSITION

The order resentencing appellant is affirmed.

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JOHNSON (MICHAEL), J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.